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National Interest vs. Individual Justice

How Court Trials Draw the CIA Into the Open

In the imposing U.S. courthouse in Buffalo, N.Y., last week, U.S. District Judge John O. Henderson gaveled the end of a four-week trial. A bearded former Royal Air Force pilot and a gray-haired French count left the courtroom free men—acquitted of charges they had conspired to smuggle World War II-vintage B-26 bombers from the United States to Portugal.

In the U.S. courthouse in Baltimore last week, U.S. District Judge Roszel C. Thomsen was still deep in thought over a judgment that would climax two years of litigation in a slander suit involving two Estonian emigres, one a Canadian, one an American.

Two widely different cases in two cities 270 miles apart. But both are noteworthy because they represent the first major appearances of the Central Intelligence Agency (CIA) in court proceedings. And because of the prominence of the CIA in the fabric of national security, its appearance in these cases posed the question: To what extent are state secrets involving the national interest immune from disclosure in a court of law?

CIA Involvement Claimed

In the Buffalo case the fomer RAF pilot, John R. Hawke, 29, and the French count, Henri de Montmarin, 58, were charged with violating the Munitions Control Act by sending the planes to Portugal without export licenses. Both men said they were working for a man named Gregory R. Board, 45, believed to be hiding in sunny, extradition-free Jamaica. Mr. Hawke told the court he flew the planes with the understanding the entire operation was promoted by the CIA.

To the mild surprise of many, CIA Director Richard Helms sent one of his highest-ranking officials to testify in Buffalo. Lawrence R. Houston, general counsel of the CIA, brought the agency's entire file on the B-26 bombers and denied under oath that the CIA had anything to do with the plane smuggling. He explained that the few CIA documents on the case were "raw, unevaluated information," which the CIA passed on to appropriate Government agencies. The only deletions from the CIA file to Judge Henderson were code words and CIA information sources.

After examining the documents, Judge Henderson concluded: "The records indicate that, rather than promoting this operation, the information gathered by the CIA resulted in the arrest of these defendants." He later said that "the release of these reports by Houston indicates CIA involvement in this case is pure theory."

When the jury finally acquitted the two men, it said its action was based on the fact that the two had been "just an instrument" for the man who sold the B-26s, Mr. Board. Several jurors said that they believed Mr. Houston's testimony that the CIA did not promote the flights but that the CIA information was only incidental to the case.

'A Sort of Whipping Boy'

A glum assistant U.S. attorney Richard Lehner agreed that the "CIA factor" was minor in the B-26 case. But he said the case may set a precedence for the use of the CIA as a handy sanctuary for defendants. These defendants, he said, might raise a smoke screen of "CIA intrigue" and hope to capitalize on the widespread belief that "the CIA would do anything." Such a belief is entirely untrue, Mr. Lehner noted, but "it's an excellent standard defense. . . . The CIA becomes a sort of whipping boy."

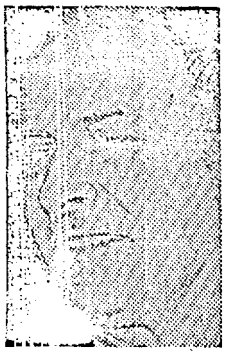
Mr. Houston does not believe the Buffalo acquittal will have this effect. "I don't share that view," he says. "I'm hopeful that the mere fact of my appearance in this case will give pause to those who would attempt to use the CIA as a convenient part of their defense."

In the Baltimore case, the CIA is a willing, and in fact primary, part of the defense of Juri Raus. Mr. Raus is an Estonian-American who is being sued for a total of $110,000 in damages by Eerik Heine, another Estonian emigre, whom Mr. Raus has accused of being a Soviet spy. Mr. Heine, who lives in a suburb of Toronto, contends he is an Estonian patriot, freedom-fighter, and anti-Communist. Mr. Raus, who lives in Hyattsville, Md., and is an engineer for the U.S. Bureau of Public Roads, had said on at least three occasions that Mr. Heine was a planted Soviet agent, collecting information on Estonian emigre activities in North America.

This almost routine slander case blew into the headlines this past summer, when Mr. Raus revealed that he was a CIA agent who, in the CIA's own words, "was instructed to disseminate such information [about Mr. Heine's alleged spy activities] so as to protect the integrity of the agency's foreign intelligence sources." The Raus statements were apparently intended to put the Estonian community in North America on its guard for Mr. Heine, who has traveled widely to lecture to Estonian groups and to show a film of Estonia's fight against the Soviet take-over of the tiny Baltic nation.

Were Mr. Raus' statements about Mr. Heine true? Mr. Raus and the CIA contend it is beyond the pale of Judge Thomsen's court or any other court even to discuss this question. Mr. Raus claimed absolute privilege as an employe of an executive branch of the U.S. Government, the CIA. This would mean that he was not subject to any kind of court action because, as an affidavit filed with Judge Thomsen by CIA Director Helms said, "when he [Raus] spoke concerning the plaintiff [Heine] on such occasions, he was acting within the scope and course of his employment by the agency on behalf of the United States."

In a later, more detailed affidavit, Mr. Helms told Judge Thomsen that "after a personal review of the agency's activities pertaining to Eerik Heine, I have reached the judgment on behalf of the agency that it would be contrary to the security interests of the United States for any further information pertaining to the use and employment of Juri Raus by the agency in connection with Eerik Heine to be disclosed. . . . I am herewith directing Juri Raus to make no further disclosures concerning his employment by the agency or relating to this matter. . . ."



Mr. Houston

Judge Thomsen was more than familiar with executive privilege, but here was indeed a dilemma, for a man whose name was maligned seemed to have no right to defend himself. Surely, following this line of reasoning, Mr. Heine could not be shut off altogether from attempting to disprove the slander against him. "You are not going to persuade this court," Judge Thomsen told Mr. Raus' lawyers, "that there is anybody in this country who does not have some rights." There was a touch of the academic here, in that Mr. Heine lives in Canada. But the problem was obvious. Judge Thomsen, still wrestling with it, may announce his decision within the next few weeks.

Prepared to Appeal

If Judge Thomsen grants summary judgment allowing Mr. Raus his right of privilege, Mr. Heine's lawyers are prepared to appeal to a higher court. But these lawyers contend that Mr. Raus was only a part-time employe of the CIA, and that he thus should not be allowed to claim executive privilege. If Judge Thomsen denied Mr. Raus privilege on these grounds, "then the case may be tried on its merits," says one of the Heine attorneys, Ernest C. Raskauskas.

But even if Judge Thomsen were to disallow privilege on the strength of this argument, the problem of privilege would immediately spring up as the case was tried "on its merits." Mr. Raus would be expected to prove his statements. Mr. Heine would want to disprove them. There would have to be more exposition of how, when, and where Mr. Raus received his information if he received it at all. Such exposition, the CIA contends, would be delving too deeply into matters that should be kept secret in the public interest. Judge Thomsen himself admitted during one of the hearings that "if further information were revealed, it might expose the entire U.S.

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counter-espionage apparatus."

There is a precedent for the CIA stand. Perhaps the most germane case is *United States v. Patricia J. Reynolds*, a civil suit involving privilege, which went to the Supreme Court in 1952. There, Chief Justice Fred M. Vinson upheld the Government's right of privilege in denying the use in court of documents pertaining to a military-plane crash because the documents contained secret information on equipment aboard the plane. Chief Justice Vinson's decision noted the difficulties of the question.

"Judicial experience with the privilege which protects military and state secrets has been limited in this country," his decision began. ". . . Nevertheless, the principals which control the application of privilege emerge quite clearly from the available precedents. The privilege belongs to the Government and must be asserted by it." But, the Chief Justice wrote, "it is not to be lightly invoked."

For Judge Thomsen then, an important legal problem has emerged from the drab cocoon of a routine civil suit. The right of privilege is "in the public interest." It may well be in the public interest to destroy a man's reputation if that man, as a spy, is a public enemy. But it is also in the public interest that every individual be able to defend himself. This is the dilemma that confronts Judge Thomsen.

—RALPH K. BENNETT

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